

## DRUG TRAFFICKING SENTENCING (G.S. 90-95(h))

James M. Markham, UNC School of Government (August 2013)

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- I. Overview.** Drug trafficking is not sentenced using the regular Structured Sentencing grid. Instead, a person convicted of drug trafficking must be sentenced as set out below, including the mandatory fine, regardless of his or her prior criminal record. A person sentenced for trafficking may not be placed on probation unless the judge finds that the person has provided *substantial assistance*, as described below. Trafficking sentences must run consecutively with any other sentence being served by the defendant. However, when a trafficking offense is disposed of in the same proceeding as another conviction the court may impose concurrent sentences. *State v. Walston*, 193 N.C. App. 134, 141–42 (2008).
- II. Conspiracy to Commit Trafficking.** Conspiracies to commit trafficking offenses are punishable the same as the completed offense. G.S. 90-95(i).
- III. Attempted Trafficking.** Attempts to commit trafficking are the same *offense class* as the completed offense, but they are sentenced under the ordinary Structured Sentencing grid for that class of offense and prior record level, not the special mandatory sentences for completed trafficking offenses. G.S. 90-98.
- IV. Substantial Assistance.** The judge sentencing a defendant for trafficking *may* reduce the fine, or impose a prison term less than the applicable minimum, or suspend the prison term and place the defendant on probation when the defendant has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals, if the sentencing judge enters in the record a finding that the defendant has rendered such substantial assistance. G.S. 90-95(h)(5). The assistance offered need not be limited to accomplices, etc., involved in the defendant's individual case; the court is permitted to consider the defendant's assistance in the prosecution of other cases. *State v. Baldwin*, 66 N.C. App. 156, 158 (1984).
- A. Judge's Discretion.** The determination of whether or not the defendant has provided substantial assistance is within the discretion of the trial court. *State v. Hamad*, 92 N.C. App. 282, 289 (1988).
- B. Reduction of Sentence.** Even when the court finds substantial assistance, the decision to reduce the defendant's sentence is in the court's discretion. *State v. Wells*, 104 N.C. App. 274, 276-77 (1991). When substantial assistance applies, the court may select a minimum sentence of its choosing; it is not bound by the regular sentencing grid. *State v. Saunders*, 131 N.C. App. 551, 553 (1998). However, to aid in the administration of the sentence, the

court should probably order a maximum that is 120% of the imposed minimum plus additional time for post-release supervision, as appropriate, depending on the defendant's offense class and offense date.

- V. **Post-Release Supervision.** The applicability of the post-release supervision law to drug trafficking sentences has changed over time in response to the Justice Reinvestment Act and related legislation. See G.S. 15A-1368.1.
- A. **Offenses committed before 12/1/11:**
1. **Class C–E trafficking offenses** receive 9 months of PRS
  2. **Class F–H trafficking offenses** receive no PRS
- B. **Offenses committed on/after 12/1/11 to 11/30/12:** The applicability of PRS is unclear, as maximum sentences for trafficking were not amended to conform with the Justice Reinvestment Act until 12/1/12. As a matter of administrative practice by the prison system and the Post-Release Supervision and Parole Commission, defendants convicted of Class F, G, and H offenses in this date range do not receive post-release supervision. See Jamie Markham, *Revised Drug Trafficking Chart*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 1, 2012), <http://nccriminallaw.sog.unc.edu/?p=3762> for additional discussion of this issue.
- C. **Offenses committed on/after 12/1/12:**
1. **Class C–E trafficking offenses** receive 12-month PRS
  2. **Class F–H trafficking offenses** receive 9-month PRS

**MINIMUM–MAXIMUM SENTENCES FOR DRUG TRAFFICKING CRIMES, BY OFFENSE CLASS**

Offense committed before 12/1/12			Committed on/after 12/1/12		
Class	Minimum	Maximum	Class	Minimum	Maximum
Class C	225 mos.	279	Class C	225 mos.	282
Class D	175	219	Class D	175	222
Class E	90	117	Class E	90	120
Class F	70	84	Class F	70	93
Class G	35	42	Class G	35	51
Class H	25	30	Class H	25	39

Drug	Amount	Class	Fine (not less than)
Marijuana	In excess of 10 lbs.–49 lbs.	Class H	\$5,000
	50–1,999 lbs.	Class G	\$25,000
	2,000–9,999	Class F	\$50,000
	10,000 or more	Class D	\$200,000
Methaqualone	1,000–4,999 dosage units	Class G	\$25,000
	5,000–9,999	Class F	\$50,000
	10,000 or more	Class D	\$200,000
Cocaine	28–199 grams	Class G	\$50,000
	200–399	Class F	\$100,000
	400 or more	Class D	\$250,000
Methamphetamine	28–199 grams	Class F	\$50,000
	200–399	Class E	\$100,000
	400 or more	Class C	\$250,000
Amphetamine	28–199 grams	Class H	\$5,000
	200–399	Class G	\$25,000
	400 or more	Class E	\$100,000
Opium or Heroin	4–13 grams	Class F	\$50,000
	14–27	Class E	\$100,000
	28 or more	Class C	\$500,000
LSD	100–499 units	Class G	\$25,000
	500–999	Class F	\$50,000
	1,000 or more	Class D	\$200,000
MDA/MDMA	100–499 units/28–199 grams	Class G	\$25,000
	500–999 units/200–399 grams	Class F	\$50,000
	1,000 units/400 grams, or more	Class D	\$250,000
MDPV*	28–199 grams	Class F	\$50,000
	200–399	Class E	\$100,000
	400 or more	Class C	\$250,000
Mephedrone*	28–199 grams	Class F	\$50,000
	200–399	Class E	\$100,000
	400 or more	Class C	\$250,000

Synthetic	In excess of 50–249 dosage units**	Class H	\$5,000
Cannabinoids*	250–1,249	Class G	\$25,000
	1,250–3,749	Class F	\$50,000
	3,750 or more	Class D	\$200,000

\*\*A "dosage unit" is 3 grams of synthetic cannabinoid or any mixture containing such substance.

\* Offenses committed on or after June 1, 2011. S.L. 2011-12.